

AMENDED IN SENATE APRIL 13, 1998
AMENDED IN SENATE MARCH 30, 1998
AMENDED IN SENATE MARCH 9, 1998

SENATE BILL

No. 1443

Introduced by Senator Knight
(Coauthor: Senator Rosenthal)
(Coauthor: Assembly Member Runner)

January 28, 1998

An act to amend Section 1368 of, and to amend, repeal, and add Section 1368.02 of, the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1443, as amended, Knight. Health care service plans: complaints.

Existing law provides for the licensure and regulation of health care service plans administered by the Commissioner of Corporations. Under existing law, willful violation of any of these provisions is punishable as either a felony or a misdemeanor.

Existing law requires every health care service plan regulated by the department to prominently display in every plan contract, on enrollee and subscriber evidence of coverage forms, on complaint forms, and on all written responses to grievances and complaints, a notice of the right to submit unresolved grievances and complaints to the department for review.

This bill would repeal this requirement.

Existing law requires the commissioner to establish and maintain a toll-free telephone number for the purpose of receiving complaints regarding health care service plans regulated by the commissioner, and requires every health care service plan to publish the toll-free number on every new plan contract, on every evidence of coverage, on copies of plan grievance procedures, on plan complaint forms, and on all written notices to enrollees required under the grievance process of the plan.

This bill would require every health care service plan, commencing July 1, 1999, to publish the Internet address of the Department of Corporations *and the plan's telephone number*, as well as the California Relay Service's toll-free telephone numbers for the hearing and speech impaired, on every plan contract, on every evidence of coverage, on copies of plan grievance procedures, on plan complaint forms, and on all written notices to enrollees required under the grievance process of the plan.

The bill, in addition, would revise the statement containing information on the toll-free telephone number required to be published by a health care service plan regarding complaints to include the California Relay Service's toll-free telephone numbers for the hearing and speech impaired and the department's Internet address, among other things.

Since a willful violation of the provisions applicable to health care service plans is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1368 of the Health and Safety
- 2 Code is amended to read:



1 1368. (a) Every plan shall do all of the following:

2 (1) Establish and maintain a grievance system
3 approved by the department under which enrollees may
4 submit their grievances to the plan. Each system shall
5 provide reasonable procedures in accordance with
6 department regulations that shall ensure adequate
7 consideration of enrollee grievances and rectification
8 when appropriate.

9 (2) Inform its subscribers and enrollees upon
10 enrollment in the plan and annually thereafter of the
11 procedure for processing and resolving grievances. The
12 information shall include the location and telephone
13 number where grievances may be submitted.

14 (3) Provide forms for complaints to be given to
15 subscribers and enrollees who wish to register written
16 complaints. The forms used by plans licensed pursuant to
17 Section 1353 shall be approved by the commissioner in
18 advance as to format.

19 (4) Keep in its files all copies of complaints, and the
20 responses thereto, for a period of five years.

21 (b) (1) (A) After either completing the grievance
22 process described in subdivision (a), or participating in
23 the process for at least 60 days, a subscriber or enrollee
24 may submit the grievance or complaint to the
25 department for review. In any case determined by the
26 department to be a case involving an imminent and
27 serious threat to the health of the patient, including, but
28 not limited to, the potential loss of life, limb, or major
29 bodily function, or in any other case where the
30 department determines that an earlier review is
31 warranted, a subscriber or enrollee shall not be required
32 to complete the grievance process or participate in the
33 process for at least 60 days.

34 (B) A grievance or complaint may be submitted to the
35 department for review and resolution prior to any
36 arbitration.

37 (C) Notwithstanding subparagraphs (A) and (B), the
38 department may refer any grievance or complaint to the
39 State Department of Health Services, the Department of
40 Aging, the federal Health Care Financing

1 Administration, or any other appropriate governmental
2 entity for investigation and resolution.

3 (2) If the subscriber or enrollee is a minor, or is
4 incompetent or incapacitated, the parent, guardian,
5 conservator, relative, or other designee of the subscriber
6 or enrollee, as appropriate, may submit the grievance or
7 complaint to the department as the agent of the
8 subscriber or enrollee. Further, a provider may join with,
9 or otherwise assist, a subscriber or enrollee, or the agent,
10 to submit the grievance or complaint to the department.
11 In addition, following submission of the grievance or
12 complaint to the department, the subscriber or enrollee,
13 or the agent, may authorize the provider to assist,
14 including advocating on behalf of the subscriber or
15 enrollee. For purposes of this section, a “relative”
16 includes the parent, stepparent, spouse, adult son or
17 daughter, grandparent, brother, sister, uncle, or aunt of
18 the subscriber or enrollee.

19 (3) The department shall review the written
20 documents submitted with the subscriber’s or the
21 enrollee’s request for review, or submitted by the agent
22 on behalf of the subscriber or enrollee. The department
23 may ask for additional information, and may hold an
24 informal meeting with the involved parties, including
25 providers who have joined in submitting the grievance or
26 complaint, or who are otherwise assisting or advocating
27 on behalf of the subscriber or enrollee. The department
28 shall send a written notice of the final disposition of the
29 grievance or complaint, and the reasons therefor, to the
30 subscriber or enrollee, the agent, to any provider that has
31 joined with or is otherwise assisting the subscriber or
32 enrollee, and to the plan, within 60 calendar days of
33 receipt of the request for review unless the commissioner,
34 in his or her discretion, determines that additional time
35 is reasonably necessary to fully and fairly evaluate the
36 relevant grievance or complaint. Distribution of the
37 written notice shall not be deemed a waiver of any
38 exemption or privilege under existing law, including, but
39 not limited to, Section 6254.5 of the Government Code,
40 for any information in connection with and including the

1 written notice, nor shall any person employed or in any
2 way retained by the department be required to testify as
3 to that information or notice. On or before January 1,
4 1997, the commissioner shall establish and maintain a
5 system of aging of complaints that are pending and
6 unresolved for 60 days or more, that shall include a brief
7 explanation of the reasons each complaint is pending and
8 unresolved for 60 days or more.

9 (4) A subscriber or enrollee, or the agent acting on
10 behalf of a subscriber or enrollee, may also request
11 voluntary mediation with the plan prior to exercising the
12 right to submit a grievance or complaint to the
13 department. The use of mediation services shall not
14 preclude the right to submit a grievance or complaint to
15 the department upon completion of mediation. In order
16 to initiate mediation, the subscriber or enrollee, or the
17 agent acting on behalf of the subscriber or enrollee, and
18 the plan shall voluntarily agree to mediation. Expenses
19 for mediation shall be borne equally by both sides. The
20 department shall have no administrative or enforcement
21 responsibilities in connection with the voluntary
22 mediation process authorized by this paragraph.

23 (c) The plan's grievance system shall include a system
24 of aging of complaints that are pending and unresolved
25 for 30 days or more. On or before January 1, 1997, the plan
26 shall provide a quarterly report to the commissioner of
27 complaints pending and unresolved for 30 or more days
28 with separate categories of complaints for Medicare
29 enrollees and Medi-Cal enrollees. The plan shall include
30 with the report a brief explanation of the reasons each
31 complaint is pending and unresolved for 30 days or more.
32 The plan may include the following statement in the
33 quarterly report that is made available to the public by
34 the commissioner:

35
36 "Under Medicare and Medi-Cal law, Medicare
37 enrollees and Medi-Cal enrollees each have separate
38 avenues of appeal that are not available to other
39 enrollees. Therefore, complaints pending and
40 unresolved may reflect enrollees pursuing their

1 Medicare or Medi-Cal appeal rights.”

2
3 If requested by a plan, the commissioner shall include this
4 statement in a written report made available to the public
5 and prepared by the commissioner that describes or
6 compares complaints that are pending and unresolved
7 with the plan for 30 days or more. Additionally, the
8 commissioner shall, if requested by a plan, append to that
9 written report a brief explanation, provided in writing by
10 the plan, of the reasons why complaints described in that
11 written report are pending and unresolved for 30 days or
12 more. The commissioner shall not be required to include
13 a statement or append a brief explanation to a written
14 report that the commissioner is required to prepare
15 under this chapter, including Sections 1380 and 1397.5.

16 (d) Subject to subparagraph (C) of paragraph (1) of
17 subdivision (b), the grievance, complaint, or resolution
18 procedures authorized by this section shall be in addition
19 to any other procedures that may be available to any
20 person, and failure to pursue, exhaust, or engage in the
21 procedures described in this section shall not preclude
22 the use of any other remedy provided by law.

23 (e) Nothing in this section shall be construed to allow
24 the submission to the department of any provider
25 complaint or grievance under this section. However, as
26 part of a provider’s duty to advocate for medically
27 appropriate health care for his or her patients pursuant
28 to Sections 510 and 2056 of the Business and Professions
29 Code, nothing in this subdivision shall be construed to
30 prohibit a provider from contacting and informing the
31 department about any concerns he or she has regarding
32 compliance with or enforcement of this chapter.

33 SEC. 2. Section 1368.02 of the Health and Safety Code
34 is amended to read:

35 1368.02. (a) The commissioner shall establish and
36 maintain a toll-free telephone number for the purpose of
37 receiving complaints regarding health care service plans
38 regulated by the commissioner.

39 (b) Every health care service plan shall publish the
40 toll-free number required by this section on every new

1 plan contract, on every evidence of coverage, on copies
2 of plan grievance procedures, on plan complaint forms,
3 and on all written notices to enrollees required under the
4 grievance process of the plan. The toll-free number shall
5 be displayed by the plan in each of these documents in
6 12-point boldface type in the following regular type
7 statement:

8
9 “The California Department of Corporations is
10 responsible for regulating health care service plans. The
11 department has a toll-free telephone number
12 [1-800-telephone number] to receive complaints
13 regarding health plans. If you have a grievance against
14 the health plan, you should contact the plan and use the
15 plan’s grievance process. If you need the department’s
16 help with a complaint involving an emergency grievance
17 or with a grievance that has not been satisfactorily
18 resolved by the plan, you may call the department’s
19 toll-free telephone number.”

20
21 (c) If the plan’s revised evidence of coverage is not
22 published and distributed to all enrollees on or before
23 April 1, 1996, the plan shall provide all enrollees with the
24 statement specified in subdivision (b) by April 1, 1996, in
25 a written notification document dealing solely with the
26 grievance process. Each plan’s revised evidence of
27 coverage shall include the statement specified in
28 subdivision (b) no later than January 1, 1997.

29 (d) The commissioner shall designate an
30 ombudsperson. The duties of the ombudsperson shall be
31 determined by the commissioner. The commissioner may
32 designate a member of the existing staff to serve as the
33 ombudsperson.

34 (e) This section shall become inoperative on July 1,
35 1999, and, as of January 1, 2000, is repealed, unless a later
36 enacted statute that is enacted before January 1, 2000,
37 deletes or extends the dates on which it becomes
38 inoperative and is repealed.

39 SEC. 3. Section 1368.02 is added to the Health and
40 Safety Code, to read:

1 1368.02. (a) The commissioner shall establish and
2 maintain a toll-free telephone number for the purpose of
3 receiving complaints regarding health care service plans
4 regulated by the commissioner.

5 (b) Every health care service plan shall publish the
6 department's toll-free telephone number, the California
7 Relay Service's toll-free telephone numbers for the
8 hearing and speech impaired, *the plan's telephone*
9 *number*; and the department's Internet address, on every
10 plan contract, on every evidence of coverage, on copies
11 of plan grievance procedures, on plan complaint forms,
12 and on all written notices to enrollees required under the
13 grievance process of the plan, including any written
14 communications to an enrollee that offer the enrollee the
15 opportunity to participate in the grievance process of the
16 plan and on all written responses to grievances. The
17 department's telephone number, the California Relay
18 Service's telephone numbers, *the plan's telephone*
19 *number*, and the department's Internet address shall be
20 displayed by the plan in each of these documents in
21 12-point boldface type in the following regular type
22 statement:
23

24 "The California Department of Corporations is
25 responsible for regulating health care service plans. The
26 department's Health Plan Division has a toll-free
27 telephone number (1-800-400-0815) to receive
28 complaints regarding health plans. The hearing and
29 speech impaired may use the California Relay Service's
30 toll-free telephone numbers (1-800-735-2929 (TTY) or
31 1-888-877-5378 (TTY)) to contact the department. The
32 department's Internet website
33 (<http://www.corp.ca.gov>) has complaint forms and
34 instructions online. If you have a grievance against your
35 health plan, you should first ~~contact~~ *telephone* your plan
36 and use the plan's grievance process *before contacting*
37 *the Health Plan Division*. If you need help with a
38 grievance involving an emergency, a grievance that has
39 not been satisfactorily resolved by your plan, or a
40 grievance that has remained unresolved for more than 60

1 days, you may call the Health Plan Division for assistance.
2 The plan's grievance process and the Health Plan
3 Division's complaint review process are in addition to any
4 other dispute resolution procedures that may be available
5 to you, and *your failure to use these processes does not*
6 preclude your use of any other remedy provided by law.”
7

8 (c) The commissioner shall designate an
9 ombudsperson. The duties of the ombudsperson shall be
10 determined by the commissioner. The commissioner may
11 designate a member of the existing staff to serve as the
12 ombudsperson.

13 (d) This section shall become operative on July 1, 1999.

14 SEC. 4. No reimbursement is required by this act
15 pursuant to Section 6 of Article XIII B of the California
16 Constitution because the only costs that may be incurred
17 by a local agency or school district will be incurred
18 because this act creates a new crime or infraction,
19 eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition
22 of a crime within the meaning of Section 6 of Article
23 XIII B of the California Constitution.

24 Notwithstanding Section 17580 of the Government
25 Code, unless otherwise specified, the provisions of this act
26 shall become operative on the same date that the act
27 takes effect pursuant to the California Constitution.